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SENATE BILL 1131

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO THE LIQUOR EXCISE TAX; ADJUSTING THE DEFINITION OF
"SMALL WINER OR WINEGROWER"; CLARIFYING TAXATION ON CERTAIN
WINE TRANSFERS; PROVIDING FOR PAYMENT OF TAX BY A WHOLESALER
WHEN A WHOLESALER DISTRIBUTES WINE PRODUCED BY A NEW MEXICO
WINERY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-17-2 NMSA 1978 (being Laws 1966,
Chapter 49, Section 2, as amended) is amended to read:

"7-17-2. DEFINITIONS. -- As used in the Liquor Excise Tax
Act:

A. "alcoholic beverages" means distilled or
rectified spirits, potable alcohol, brandy, whiskey, rum, gin,
[and] aromatic bitters or any similar [alcoholic] beverage,
including blended or fermented beverages, dilutions or

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1 mixtures of one or more of the foregoing containing more than
2 one-half of one percent alcohol by volume, but [excluding]
3 does not include medicinal bitters;

4 [~~(1)~~] "~~spirituous liquors~~" means alcoholic
5 beverages, ~~except fermented beverages such as wine, beer,~~
6 ~~cider and ale;~~

7 ~~(2)~~] B. "beer" means [any] an alcoholic beverage
8 obtained by the fermentation of any infusion or decoction of
9 barley, malt and hops or other cereals in water and includes
10 porter, beer, ale and stout;

11 [~~(3)~~] C. "cider" means an alcoholic beverage made
12 from the normal alcoholic fermentation of the juice of sound,
13 ripe apples that contains [not less than one-half of one
14 percent of alcohol by volume and] not more than seven percent
15 of alcohol by volume;

16 [~~(4)~~] "~~fortified wine~~" means wine containing
17 ~~more than fourteen percent alcohol by volume when bottled or~~
18 ~~packaged by the manufacturer, but does not include:~~

19 ~~(a) wine that is sealed or capped by~~
20 ~~cork closure and aged two years or more;~~

21 ~~(b) wine that contains more than~~
22 ~~fourteen percent alcohol by volume solely as a result of the~~
23 ~~natural fermentation process and has not been produced with~~
24 ~~the addition of wine spirits, brandy or alcohol; or~~

25 ~~(c) vermouth and sherry; and~~

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1 ~~(5) "wine" includes the words "fruit juices"~~
2 ~~and means alcoholic beverages, other than cider, obtained by~~
3 ~~the fermentation of the natural sugar contained in fruit or~~
4 ~~other agricultural products, with or without the addition of~~
5 ~~sugar or other products, that do not contain less than one-~~
6 ~~half of one percent nor more than twenty one percent alcohol~~
7 ~~by volume;~~

8 ~~B.-] D.~~ "department" means the taxation and revenue
9 department, the secretary of taxation and revenue or any
10 employee of the department exercising authority lawfully
11 delegated to that employee by the secretary;

12 E. "fortified wine" means wine containing more
13 than fourteen percent alcohol by volume when bottled or
14 packaged by the manufacturer, but does not include:

15 (1) wine that is sealed or capped by cork
16 closure and aged two years or more;

17 (2) wine that contains more than fourteen
18 percent alcohol by volume solely as a result of the natural
19 fermentation process and has not been produced with the
20 addition of wine spirits, brandy or alcohol; or

21 (3) vermouth and sherry;

22 ~~[C.-] F.~~ "microbrewer" means ~~[any]~~ a person who
23 produces fewer than five thousand barrels of beer in a year;

24 ~~[D.-] G.~~ "person" ~~[means any individual, estate,~~
25 ~~trust, receiver, cooperative association, club, corporation,~~

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1 ~~company, firm, partnership, joint venture, syndicate or other~~
2 ~~association; "person" also means~~ includes to the extent
3 permitted by law, ~~[any]~~ a federal, state or other governmental
4 unit or subdivision ~~[or]~~, agency, department, institution or
5 instrumentality thereof;

6 ~~[E.]~~ H. "small winer or winegrower" means ~~[any]~~ a
7 person who produces fewer than ~~[five hundred sixty]~~ nine
8 hundred fifty thousand liters of wine in a year; ~~[and~~

9 ~~F.]~~ I. "spirituous liquor" means alcoholic
10 beverages, except fermented beverages such as wine, beer,
11 cider and ale;

12 J. "wholesaler" means ~~[any]~~ a person holding a
13 license issued ~~[under]~~ pursuant to Section 60-6A-1 NMSA 1978
14 or ~~[any]~~ a person selling alcoholic beverages that were not
15 purchased from a person holding a license issued under Section
16 60-6A-1 NMSA 1978;

17 K. "wine" means an alcoholic beverage other than
18 cider, obtained by the fermentation of the natural sugar
19 contained in fruit or other agricultural products, with or
20 without the addition of sugar or other products, that does not
21 contain more than twenty-one percent alcohol by volume; and

22 L. "winegrower" means a person licensed pursuant
23 to Section 60-6A-11 NMSA 1978. "

24 Section 2. Section 7-17-5 NMSA 1978 (being Laws 1993,
25 Chapter 65, Section 8, as amended) is amended to read:

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1 "7-17-5. IMPOSITION AND RATE OF LIQUOR EXCISE TAX. --

2 A. There is imposed on [~~any~~] a wholesaler who
3 sells alcoholic beverages on which the tax imposed by this
4 section has not been paid an excise tax, to be referred to as
5 the "liquor excise tax", at the following rates on alcoholic
6 beverages sold:

7 [~~A.-~~] (1) on spirituous liquors, one dollar
8 sixty cents (\$1.60) per liter;

9 [~~B.-~~] (2) on beer, except as provided in
10 [~~Subsection E~~] Paragraph (5) of this [~~section~~] subsection,
11 forty-one cents (\$.41) per gallon;

12 [~~C.-~~] (3) on wine, except as provided in
13 [~~Subsections D and F~~] Paragraphs (4) and (6) of this [~~section~~]
14 subsection, forty-five cents (\$.45) per liter;

15 [~~D.-~~] (4) on fortified wine, one dollar fifty
16 cents (\$1.50) per liter;

17 [~~E.-~~] (5) on beer manufactured or produced by
18 a microbrewer and sold in this state, provided that proof is
19 furnished to the department that the beer was manufactured or
20 produced by a microbrewer, eight cents (\$.08) per gallon;

21 [~~F.-~~] (6) on wine manufactured or produced by
22 a small winer or winegrower and sold in this state, provided
23 that proof is furnished to the department that the wine was
24 manufactured or produced by a small winer or winegrower, ten
25 cents (\$.10) per liter on the first eighty thousand liters

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1 sold and twenty cents (\$.20) per liter on all liters sold over
2 eighty thousand liters but less than [~~five hundred sixty~~] nine
3 hundred fifty thousand liters; and

4 [~~6.~~] (7) on cider, forty-one cents (\$.41) per
5 gallon.

6 B. The volume of wine transferred from one
7 winegrower to another winegrower for the purpose of
8 processing, bottling or storage and subsequent return to the
9 transferor shall be excluded pursuant to Section 7-17-6 NMSA
10 1978 from the taxable volume of wine of the transferee. Wine
11 transferred from an initial winegrower to a second winegrower
12 remains a tax liability of the transferor, provided that if
13 the wine is transferred to the transferee for the transferee's
14 use or for resale, the transferee then assumes the liability
15 for the tax due pursuant to this section.

16 C. A transfer of wine from a winegrower to a
17 wholesaler for distribution of the wine transfers the
18 liability for payment of the liquor excise tax to the
19 wholesaler upon the sale of the wine by the wholesaler."

20 Section 3. Section 7-17-6 NMSA 1978 (being Laws 1984,
21 Chapter 85, Section 4, as amended) is amended to read:

22 "7-17-6. DEDUCTION-- INTERSTATE SALES-- WINEGROWER-TO-
23 WINEGROWER TRANSFERS. --

24 A. A wholesaler may deduct the liters of
25 spirituous liquors, gallons of beer and liters of wine sold

1 and shipped to a person in another state from the units of
2 alcoholic beverages subject to the tax imposed by the Liquor
3 Excise Tax Act; provided that the department may require the
4 wholesaler to submit evidence satisfactory to the department
5 that the units have been sold and shipped to a person in
6 another state.

7 B. A winegrower may deduct the liters of wine
8 transferred to the winegrower from another New Mexico
9 winegrower for processing, bottling or storage and subsequent
10 return to the transferor from the units of wine subject to the
11 liquor excise tax on the licensed premises of the winegrower."

12 Section 4. EFFECTIVE DATE. --The effective date of the
13 provisions of this act is July 1, 2007.

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